

1982 WL 189313 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 7, 1982

**\*1 In re: New State Employee Grievance Procedure Act**

Dr. Jack S. Mullins  
Director  
State Personnel Division  
Post Office Box 12547  
Columbia, SC 29211

Dear Dr. Mullins:

During our meeting last week on the subject of the recently passed grievance legislation, you inquired as to how cases now pending before the State Employee Grievance Committee would be affected by the new law. Specifically, you questioned whether, on and after the effective date of the State Employee Grievance Procedure Act of 1982, the Budget and Control Board would nevertheless review the Committee's findings and conclusions concerning those grievants whose grievances were filed with the State Committee prior to the effective date of the new act. After reviewing the applicable law, it is the opinion of this office that, (1) proceedings conducted under the old act survive the repeal thereof to the extent that the subject of those grievances prosecuted under the old act are cognizable under the new act; and (2) on and after the effective date of the State Employee Grievance Procedure Act of 1982, all grievance hearings including those which have begun but have not yet been completed should be conducted in accordance with the procedure provided under the new act. It is the further opinion of this office that any decision reached by the Committee or one of its panels on or after the effective date of the new act shall be final.

Section 10 of the new act (H. 2626) expressly repeals the State Employee Grievance Procedure Act, Section 8-17-10 et seq., Code of Laws of South Carolina, 1976, as amended. Generally, 'the repeal of a statute has the effect of blotting it out as completely as if it had never existed and of putting an end to all proceedings under it.' [Marshall v. Richardson](#), 240 S.C. 318, 323, 125 S.E.2d 639 (1962). The new act, however, while expressly repealing the former Grievance Procedure Act, substantially reenacts the old law. Under these circumstances, the general rule quoted in [Marshall v. Richardson](#), *supra*, does not apply, for our Supreme Court has said that where a statute is repealed by a new statute which relates to the same subject matter and which reenacts substantially the provisions of the repealed statute, and the repeal and enactment occur simultaneously, 'the repealing act should not be construed as putting an end to all proceedings under the prior act if any other construction is possible as to such rights as have vested under the act repealed . . .'. [South Carolina Mental Health Commission v. May](#), 226 S.C. 108, 115-116, 83 S.E.2d 713 (1954). Based on [Marshall v. Richardson](#), *supra*, and [May](#), *supra*, it is the opinion of this office that the proceedings that have been conducted in grievance matters under the old act, including hearings before the State Employee Grievance Committee, survive the repeal of the old act, but only to the extent that the subject of these grievances is made grievable by the new act.

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**\*2** Concerning proceedings before the State Employee Grievance Committee in those cases which have been referred to it by the State Personnel Director, it is the opinion of this office that, upon the effective date of the new law, all hearings—including those which were begun under the old law—should be conducted in accordance with the procedures prescribed in Section 4 of the new law. Statutory enactments relating to procedure are generally held to be immediately applicable to all actions then pending in the absence of a clearly-expressed contrary legislative intent. 2 [Sutherland's Statutory Construction](#) § 41.04 at 253-4 (4th ed. 1973); 73 [Am. Jur. 2d Statutes](#) § 354 (1974). See also [Hercules, Inc. v. South Carolina Tax Commission](#),

[274 S.C. 137, 143, 262 S.E.2d 45 \(1980\)](#) (procedural statutes generally held to apply retrospectively). There is nothing in the new legislation to indicate that the General Assembly does not intend for the procedural rules provided for in Section 4 to be effective immediately. Therefore, on and after the effective date of the new act, the committee attorney may participate in hearings before the Committee regardless of whether the hearing is a continuation of a hearing commenced under the old law or is a 'new' hearing. Although the new procedural rules will be applicable even to hearings begun under the old law, the proceedings conducted under the old law are valid and effective as they were properly conducted under the law as it existed at the time those proceedings were had. See 2 Sutherland's Statutory Construction § 41.04 at 253.4 (4th ed. 1973).

3.

Finally, concerning the question of whether the Budget and Control Board should make the final ruling on those grievance appeals heard by or pending before the Committee when the new act takes effect, the answer is negative. As noted previously, the general rule is that the repeal of a statute operates to blot it out as completely as if the statute never existed. See Marshall v. Richardson, supra. Although there is an exception to this rule in cases involving the simultaneous repeal and reenactment of statutes pertaining to the same subject matter, South Carolina Mental Health Commission v. May, supra, the exception, permitting survival of the repealed act and proceedings thereunder, is effective only to the extent that the provisions of the old statute are reenacted. See 73 Am. Jur. 2d Statutes § 391 (1974). The provision in the old act vesting the Budget and Control Board with final administrative authority over the disposition of grievance appeals (Section 8-17-30, Code of Laws of South Carolina, 1976 (as amended)), was not reenacted in the new statute. Indeed, the new law, in Section 4, expressly vests final administrative authority in the Committee. Under these circumstances, the effect of the new act is to blot out the former provision relating to the Budget and Control Board's authority as completely as if that provision had never existed. See 1A Sutherland's Statutory Constitution § 23.33 (4th ed. 1973). Moreover, the review by the Budget and Control Board of the Committee's findings and conclusions is purely a procedural matter, compare Turner v. United States, 410 F.2d 837 (5th Cir. 1969) (change in law relating to administrative appeals from rulings by local selective service boards eliminating right to appeal rulings to Department of Justice was procedural); and, as previously noted, procedural changes effected by a statute are applicable to all cases then pending final judgment in the absence of clearly expressed contrary legislative intent. No such contrary intent is revealed in the new act. Accordingly, Budget and Control Board review is no longer necessary, even as to those cases processed under the old law, once the new act is signed into law.

\*3 I trust this letter satisfactorily addresses the areas of your concern. If I can be of further assistance, please let me know.  
Yours very truly,

Vance J. Bettis  
Assistant Attorney General

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